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GOVERNOR

STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0028

SETH H. BRADSTREET III
COMMISSIONER
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DIRECTOR

BOARD OF PESTICIDES CONTROL

September 7, 2007

State of Maine Performance & Training Facility, Room 3 (Main Floor)
10 Mountain Avenue (off Route 201 going toward Skowhegan), Fairfield
(Exit 133 from I-95)

MINUTES

9:30 A.M.

- ☒ Present: Eckert, Simonds, Jemison, Humphreys, Qualey and Stevenson
- 1. Introductions of Board and Staff
- ☒ The Board, staff and Assistant Attorney General Randlett all introduced themselves.
- 2. Minutes of the July 27, 2007 Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

- ☒ Jemison/Simonds: Moved and seconded approval of the minutes

In Favor: Unanimous

- 3. Green Thumb Lawn Service's Request for Variance for a Vegetation Management Program Along Roadway Curbing, Sidewalks and Median Strips in the City of Brewer

The Board's drift regulations allow applicators to seek a variance from any standards they feel are unreasonable for their type of operation. Green Thumb Lawn Service would like to treat weeds to maintain sight distances, safety markers, and for safe passage for pedestrians. They are seeking a variance so they do not have to record all sensitive areas within 500 feet of the target areas. They propose to use a low-pressure hand-held apparatus and to leave a 50-foot untreated buffer to surface waters and a 150-foot untreated buffer to public gathering places. Spot treatments and directed applications will be made whenever possible, and the City of Brewer will publish a notice.

Presentation by: Henry Jennings
Acting Director

Action Needed: Approve/Deny the variance request

- ☒ Jennings stated that this was a fairly standard variance request involving right-of-way spraying. Green Thumb proposes to use Roundup Pro, which is not a mobile herbicide. They will buffer surface water and the city will publish notice of the project. The Board must consider the variance because it is the first time the company has applied for one. Humphreys inquired how many times Roundup would be applied. Michael Legasse of Green Thumb responded once a year. Eckert asked how Green Thumb proposed to avoid human exposure. Legasse stated they would not spray if people are in the vicinity. Humphreys noted an increase in the number of variance requests before the Board, indicating an increase in pesticide use. She pointed out the Board's statutory mission is to minimize reliance on pesticide use and urged Green Thumb to be stingy with its use of pesticides and look for alternative approaches.

Simonds/Qualey: Moved and seconded approval of the variance request.

In Favor: Six in favor, Humphreys opposed.

4. Review of Staff Options to Address Concerns Voiced by the Structural Pest Control Industry Relating to Chapter 26 of the Board's Rules

In May of 2006, the Board adopted Chapter 26, Standards for Indoor Pesticide Applications and Notification for All Occupied Buildings Except K-12 Schools. The new rule became effective on January 1, 2007. Since the rule was adopted, pest management professionals have alerted the Board that the advance notice requirements are creating unreasonable hardships for both applicators and customers. The Board held a preliminary review of those concerns at its June 22, 2007, meeting in which Board members directed the staff to develop a number of options for the next meeting. The Board will review the options developed by the staff and determine which, if any, should be developed for rulemaking.

Presentation By: Gary Fish
Manager of Pesticide Programs

Action Needed: Determine whether it is appropriate to propose rulemaking amendments

- ☒ Fish reviewed the memo outlining various options to address concerns voiced by indoor applicators relating to Chapter 26. Options included exempting crack and crevice treatments from the notification requirements or changing the notice requirements to give applicators more flexibility to make treatments on short notice. The memo also discussed possible changes addressing who is ultimately responsible for posting notice and the length of time notice should be posted.

Fish pointed out that exempting crack and crevice treatments from the notice requirements would probably negate the need to make other changes relating to notification, so the Board has a couple of options to address the structural applicators' concerns. Board members felt the use of a strict definition of crack and crevice would be important if these applications are exempted. They preferred a second option that contained language advising applicators to minimize airborne components of the application. Consensus was reached to further develop the crack and crevice proposal and bring it back for review at the next Board meeting.

Board members next considered the concept of sharing responsibility for providing notice between the applicator and building owner/manager. Similar language can be found in Chapter

51 of the Board's rules. There were no strong feelings about this idea, so the Board members directed the staff to include the concept in the rulemaking proposal.

Finally, Fish alerted the Board that the current Chapter 26 doesn't specify a time frame for which signs need to remain posted. Consensus was reached that language should be placed on the sign stating that it must remain posted for 48 hours.

5. Clarification of Board Motion to Approve the Registration of Seven Bt Field Corn Products

At the July 27, 2007, meeting, the Board voted to approve the registration applications for seven Bt field corn products, with the conditions that the registrants provide sales reports and participate in and support educational programs for growers. Questions have arisen about the Board's intent with these conditions. The Board will discuss and attempt to clarify its intention.

Presentation by: Henry Jennings
Director

Action Needed: Clarify the intent of the registration conditions

- ☒ Jennings explained that the motion made at the July 27 meeting to approve the registration applications for seven Bt field corn products was somewhat ambiguous. The motion to approve the registrations contained conditions that the registrants "support and participate in grower training programs" and provide product sales data to the Board.

Questions arose over what the Board intended with these conditions. For instance, registrants were more than willing to provide any available information that could be used in a Board-sponsored training program, but they expressed reservations about supplying funding. In addition, registrants are willing to provide sales totals that could then be aggregated to provide to the Board, but they had reservations about disclosing confidential business information.

Board members discussed the July 27 motion. Eckert stated she was interested in the total amount of the product being used. Humphreys mentioned that the Board's staff would need the names of farmers using the products so that they could conduct inspections. Jennings pointed out that obtaining user names might be accomplished through possible rulemaking to be discussed under the next agenda item.

Kimberly Morin of Monsanto alerted the Board to a 2001 Maine statute that requires distributors of genetically modified seeds to maintain sales records and allow the commissioner of agriculture to access those records, if necessary, to investigate a complaint. Consequently, there is already a mechanism to obtain names of product users to investigate a complaint.

After a brief discussion, Board members reached consensus that their intent when conditioning the registration of the Bt corn products was to have the registrants provide sales information that can be combined for the purpose of providing the Board with annual sales totals, and that registrants should support state-sponsored training programs by providing useful information.

Jennings then alerted the Board that he had been contacted by Syngenta about registering two Bt corn products, one field corn product and one sweet corn product. He asked what procedure the Board anticipated would be necessary to deal with these requests.

Board members discussed the differences between the Bt corn products they recently approved and the products Syngenta is inquiring about. One difference is that the sweet corn product will be consumed directly by humans, as opposed to field corn which is fed to livestock. In addition, the sweet corn growers are likely to be a separate, larger group of farmers growing less corn acreage, although there may be a minimum acreage required before it's feasible to purchase Bt corn seed.

Consensus was reached to have staff toxicologist Hicks review both applications first and compare the scientific information to previously reviewed products. Hicks will report her findings at a future Board meeting where members can determine what level of review is appropriate.

6. Discussion of Potential Rulemaking Initiative to Regulate the Use of Bt Field Corn

At its July 27, 2007, meeting, the Board voted to approve registration applications for seven Bt field corn products. At that time, the Board also directed the staff to bring back a draft rule to address Board concerns about insect resistance and pollen drift. The staff has developed some preliminary language for Board consideration. In addition, Ned Porter, Deputy Commissioner for the Maine Department of Agriculture, Food and Rural Resources, has requested an opportunity to brief the Board about Department activities resulting from LD 1650, *An Act to Amend the Laws Concerning Genetically Engineered Plants and Seeds*, in order to avoid duplication and/or conflict between the two processes.

Presentation by: Ned Porter
Deputy Commissioner, Department of Agriculture, Food and Rural Resources

Gary Fish
Manager of Pesticide Programs

Action Needed: Determine whether to pursue a rulemaking initiative and/or other appropriate measures to ensure responsible use of Bt corn products

- ☒ Ned Porter, Deputy Commissioner for the Department of Agriculture, Food and Rural Resources reviewed the Department's assignment from the Joint Standing Committee on Agriculture, Conservation and Forestry (ACF) arising from LD 1650, *An Act to Amend the Laws Concerning Genetically Engineered Plants and Seeds*. He distributed copies of a letter from the ACF chairs, directing the Department to coordinate a stakeholders discussion on seed production in Maine, including a discussion of a voluntary seed growers registry. Recommendations are due to the ACF by December 3, 2007. Porter foresaw a potential overlap between the Department's assignment pertaining to any genetically modified crop and Board efforts to ensure responsible use of Bt corn. Since Jemison had been asked to participate in this stakeholders discussion, Board members suggested that he also serve as a liaison between the two groups.

Next Gary Fish reviewed his memo discussing draft rules relating to Plant-Incorporated Protectant (PIP) Products. The concepts in the proposal were based on Board member comments from the July 27 meeting. Fish first went over EPA's regulatory policies relating to PIPs. They consider the genes that code for the toxic proteins to be pesticides, but they do not consider the seeds themselves to be pesticides. From a practical standpoint, it's impossible to separate the gene from the seed, so the distinction may not be important from a regulatory perspective. Fish explained the two definitions included in the draft rule: *plant-incorporated protectant*, which is an existing EPA definition, and *plant-incorporated protectant product*, which clarifies that PIP seeds are pesticides under the Board's regulatory purview.

Fish continued reviewing the proposal that would require: 1) persons who purchase and plant PIPs to have an applicators license and keep records, 2) persons who sell PIP seeds to have a restricted-use pesticide dealer's license, keep records and report sales to the Board, and 3) persons planting Bt corn products to leave a 660-foot buffer to non-Bt corn and to attend a specialized training session.

Board members discussed each component of the proposal. They supported the idea of requiring an applicator's license for growers using PIP products. Members also felt growers should attend a specialized training session. They felt seed distributors should keep records, but they didn't feel it was useful for seed distributors to obtain a restricted-use dealers license or to report their sales. Consequently, they directed the staff to revise the draft to only require a general-use pesticide dealer's license. The Board also supported leaving the 660-foot setback in the initial rulemaking proposal. Members directed the staff to make the suggested revisions and return with a new proposal.

7. Discussion of Preliminary Rulemaking Language to Address Concerns with Aerial Applications

At its November 17, 2006, meeting, the Board established a Stakeholders Committee on aerial application issues. The committee was charged with developing recommendations for Board consideration, which would address aerial spraying concerns. The committee met five times from March through July and developed a prioritized list of recommendations. The Board reviewed the report and heard testimony from concerned citizens at its July 27, 2007, meeting, and it directed the staff to begin framing regulatory language in three subject areas: notification, drift management plans and verifying the correct site. The Board also agreed to review the Stakeholders Committee Report and do its own prioritization. The Board will now review the draft regulatory language and discuss what other areas it feels the staff should work on.

Presentation by: Henry Jennings
Director

Action Needed: Provide direction to staff on preliminary regulatory language and other potential changes to pursue

- ☒ Jennings explained that the draft rule amendments addressing aerial application concerns are predicated on the premise that the Board would also develop two new definitions that categorize sensitive areas into two subsets: those that are likely to be occupied by humans and those relating to water resources. He first discussed the proposed amendments to Chapter 28 relating to notification. The proposal would require anyone contracting for aerial applications

that are not covered under Chapter 51 to either notify persons occupying sensitive areas within 1,000 feet of the target area, or to inform them of their right to be notified. Jennings commented that many people will question the origin of the 1,000-foot figure. He stated it represents a conservative estimate of the distance from aerial application sites for which public concerns and complaints arise and is based on a review of historical drift complaints and enforcement cases. Jennings stated that the staff believes that making sure nearby residents are aware of impending aerial applications is the single most useful change they can recommend.

Jennings went on to discuss the draft amendments to Chapter 22. The section on the identification of sensitive areas would be split into two sections: one relating to ground applications and one relating to aerial applications. Records of sensitive areas would need to be recorded on a map in either instance. In the case of aerial applications, the person contracting for the application would need to prepare a site map. Sensitive areas likely to be occupied would need to be identified within 1,000 feet of the target area, while water resource sensitive areas would only need to be identified within 500 feet of the target area. Jennings stated that many of the incidents that occurred in the last ten years indicated that pilots were unfamiliar with the target fields and the surrounding areas and residents.

The language requiring target fields to be properly identified was also modified in an effort to reduce the chances that the wrong site would be sprayed. Finally, aerial applicators would be required to develop generic drift management plans for the types of applications they anticipate making, and then use site-specific drift management measures in conjunction with the site map provided by the person contracting for the application.

Board members discussed the different components of the draft proposals. There was strong support for upgrading the notification provisions. Simonds and Qualey both agreed their own experience supports the value of prior notification. Simonds stated forestry operations routinely notified nearby landowners located farther than the 500-foot minimum distance.

Board members also supported continuing with the concepts relating to identification of sensitive areas and drift management plans for aerial applications. A short discussion ensued on whether airblast sprayers should be included with the requirements for aerial applications. Jennings agreed that airblast sprayers are prone to the production of fine droplets. However, he stated the staff does not receive as many complaints from airblast spraying. In addition, he felt airblast operators generally had greater flexibility to choose appropriate conditions. Consensus was reached to add airblast spraying to the sections affecting aerial spraying, pending public comment during rulemaking.

The Board then discussed the next steps. Consensus was reached for Board members to finish prioritizing the stakeholders ballot. The results would be reviewed at the next meeting and the Board could then decide what other areas they wished to work on.

8. Continued Discussion of Rulemaking Proposal to Continue Restrictions Associated with Browntail Moth Applications Near Marine Waters

The Maine Legislature enacted emergency legislation in the spring of 2006 and 2007, placing temporary restrictions of pesticide applications near marine waters for control of browntail moth larvae. In its January 2, 2007, report to the Joint Standing Committee on Agriculture, Conservation and Forestry (ACF), the Board recommended that the Legislature continue the restrictions during 2007, to allow time for the Board to develop a rule to continue the

restrictions indefinitely. The ACF agreed with this recommendation and is expecting a rule will be in place before the 2008 browntail moth spray season. The Board reviewed draft rulemaking language at the June 22, 2007, meeting. Board members generally supported the draft language. However, they suggested that it would be less confusing to place the exceptions at the front of the section rather than at the end. Consensus was reached to direct the staff to rearrange the language and bring a revised proposal back to the next meeting.

Presentation By: Henry Jennings
Director

Action Needed: Determine appropriate language for proposed rule amendment

- ☒ Jennings reminded Board members that they had last discussed this topic at the June 22 meeting. At that time, they felt the proposed language was fine, except that they felt it would be easier to understand if the exemption language was moved to the beginning of the proposal. That change was made.

Humphreys/Qualey: Moved and seconded that the staff initiate rulemaking on the current draft proposal in conjunction with other rulemaking initiatives.

In Favor: Unanimous

9. Continued Discussion Concerning Potential Development of Buffer Zones to Protect Surface Water

At the July 21, 2006, meeting, the Board reviewed its prioritization balloting for discretionary tasks discussed at its 2006 planning session in June. Development of buffer zones to protect water quality ranked as the Board's number four priority. The Board reviewed potential language and concepts at the January, February, March and June 2007 Board Meetings. Ideas from the June meeting have been incorporated and the Board will review the latest revisions.

Presentation by: Henry Jennings
Director

Action Needed: Continue refinement of the draft language

- ☒ This topic was also last discussed at the June 22 meeting. A few minor changes were made based on comments from that meeting. Stevenson stated that he had heard concerns from applicators doing tick and/or mosquito applications. Often areas abutting surface water are prime habitat for these pests. The Board discussed developing an exemption for such applications and directed the staff to return with a new draft containing such an exemption.

10. Discussion of BPC Planning Session

The Board's annual planning session is scheduled for October 26th. The staff will review the list of priority discretionary tasks from the previous year and solicit ideas for discussion at the upcoming one.

Presentation by: Henry Jennings
Director

- ☒ This item was tabled due to time constraints.

11. Other Old or New Business

a. Update on the Back Cove YardScaping Demonstration Project - G. Fish

☒ This item was tabled due to time constraints

b. Comments received regarding Bt corn and aerial spraying in Maine

☒ Jennings pointed out there were a number of comments that had been received about Bt corn and aerial spraying.

c. Other

☒ There were no additional topics.

12. Schedule and Location of Future Meetings

October 5 and November 16, 2007, are the tentative dates for the next Board meetings. The conference room at Maple Hill Farm has been reserved for a planning session on October 26, 2007.

Adjustments and/or additional dates?

☒ The Board added December 14 and January 25 as tentative future meeting dates.

13. Adjourn

☒ Qualey/Stevenson: Moved and seconded that the meeting adjourn at 3:28 p.m.

In Favor: Unanimous